14-535 - Tolled till - Nov 16

Judge Davis

Revised - Judge Davis - Courts

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~138~~ 222

THE UNITED STATES, APPELLANTS,

vs.

PHILIP S. JUSTICE.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 22, 1870.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 438.

THE UNITED STATES, APPELLANTS,

vs.

PHILIP S. JUSTICE.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

PHILIP S. JUSTICE
vs.
THE UNITED STATES OF AMERICA.

To the honorable the judges of the Court of Claims:

Your petitioner, Philip S. Justice, a citizen of Pennsylvania, and of the United States, residing at the city of Philadelphia, respectfully shows:

That he has at all times borne true allegiance to the Government of the United States, and has never aided or abetted or given any aid, comfort, or encouragement to rebellion against said Government.

That, on the twelfth day of August, A. D. 1861, he, in writing, addressed and delivered to Lieut. T. J. Treadwell, then commanding Frankford Arsenal in said Philadelphia, proposed to supply the Ordnance Department of the United States with four thousand (4,000) rifled muskets, calibre sixty-nine one hundredths of an inch, similar in style and finish to the sample deposited with said Treadwell, at twenty dollars ($20) each, one thousand (1,000) to be delivered in the month of September then next, and one thousand (1,000) in each month thereafter until January 1, 1862.

Also, that he would supply at least five hundred (500) cavalry sabres of best finish, subject to Government inspection and approval, at six dollars and seventy-five cents ($6 75) each, provided an order for at least five thousand (5,000) should be given him at one time, and an increased quantity could be produced each week, if necessary. A copy of which proposal is hereunto annexed, and marked "Exhibit A."

2 That, on the seventeenth day of August, 1861, Lieut. Treadwell, by authority of the Ordnance Department, instructed the petitioner that he accepted his proposal of August 12th, to furnish for the United States four thousand rifled muskets, calibre sixty-nine-one-hundredths of an inch, equal in all respects to the sample deposited with him, at twenty dollars each, packed in suitable boxes of twenty each for transportation. The whole order to be filled by the first day of January, 1862, and at the rate of one thousand per month after the first of September.

Also, five thousand sabres, like the pattern United States cavalry sabre, subject to Government inspection, at six dollars and seventy-five cents each, and packed in suitable boxes of fifty each for transportation. The whole order for sabres to be delivered at the rate of five hundred per week, after the first day of September, until completed.

It being understood that, if the muskets and sabres are not delivered within the time specified, the Government will be under no obligation to take them, but may or may not do so at its pleasure. A copy of which acceptance is hereunto annexed, and marked "Exhibit B."

That your petitioner forthwith entered upon the performance of his said contract, and engaged in the manufacture of the said arms; and, on or about the first day of January, finding himself unable to complete his said contract within the time specified, he made application for an extension of the time; and on the sixth day of January, 1862, he was notified in writing that, for the reasons stated by him, the extension of time, sixty days, for the delivery of his rifled arms and sabres to Lieut. Treadwell, was granted; and, also, that Lieut. Treadwell was authorized to accept his proposition for eight hundred revolvers, at eighteen dollars each, provided they were found, on inspection, to be of satisfactory kind

and quality for military service. A copy of which extension of time is hereunto annexed, and marked "Exhibit C."

3 That, prior and subsequent to the date of the contract above recited, the petitioner had sold and delivered to the United States a large amount of muskets and rifles of his own and foreign make, at prices varying from $28 20 to $18; all of which were duly inspected and accepted by the proper Government officers.

That the petitioner delivered to the United States, under the contracts made through Lieut. Treadwell, including those in the account hereinafter stated, twenty-one hundred and seventy-four (2,174) rifled muskets and twenty-four hundred and sixty-nine (2,469) rifles with sword bayonets, at the agreed price of twenty dollars ($20) for each rifle or rifled musket, and also, a large amount of sabres and revolvers other than those specified in the said account; all of which said arms were duly inspected, approved, and the same were paid for by the United States, at the rates agreed upon, with the exception of those hereinafter specified.

That the said Lieut. Treadwell, between January 27th and February 15th, duly inspected and approved three hundred and fifty rifles with sword bayonets, four hundred and seventy-two rifled muskets with angular bayonets, three hundred and sixty two cavalry sabres and ten Whitney revolving pistols, purchased of petitioner for the United States Ordnance Department, under orders dated August 12 and 17, 1861, and instructions from said Ordnance Department, dated August 16, 1861, and January 6, 1862; and on the nineteenth day of March, 1862, certified in writing that the said rifles, rifled muskets, sabres, and pistols were good, serviceable arms, fit in all respects for use in the field, to be paid for at the rate of twenty dollars each for the rifles and rifled muskets, and six dollars and seventy-five cents each for cavalry sabres, and eighteen dollars each for the Whitney revolving pistols, including appendages, packed in seven boxes, valued at seventy-five cents each, and forty-one boxes, valued at two dollars and fifty cents each.

All of which were receipted for by Lieut. Treadwell on the fifteenth day of March, 1862. A copy of which certificate and receipt is

4 hereunto annexed, and marked "Exhibit D."

That thereupon your petitioner presented his account to the said Ordnance Department for the said sum, as follows:

United States to Philip S. Justice, Dr.

350	rifles with sword bayonets, *a* $20	$7,000 00
472	rifled musket, angular bayonets, *a* 20	9,440 00
362	cavalry sabres, *a* $6 75	2,443 50
10	Whitney revolving pistols, *a* $18 00	180 00
41	boxes, *a* $2 50	102 50
7	boxes, *a* 75 cents	5 25
		$19,171 25

That payment of said account was suspended by the said Ordnance Department, and, as petitioner is informed and believes, the same was, on or about the twentieth day of May, 1862, referred, by the said Ordnance Department, or the Secretary of War, to a commission for examination as to the said rifles and rifled muskets, which said commission, on the twenty-fifth day of June, 1862, made their final report, recommending that for the 2,469 rifles, delivered as aforesaid, the petitioner

be allowed the contract price of twenty dollars each, as claimed in said account, and that for the 2,174 rifled muskets a deduction should be made of five dollars each, or that petioner should be allowed fifteen dollars only for the same. instead of twenty dollars as stated in said contract; and thereafterwards, on or about the 9th and 13th of December, 1862, the petitioner was paid the sum of eight thousand three hundred and one dollars and twenty-five cents on said account, and no more, leaving due him thereon the sum of ten thousand eight hundred and seventy dollars ($10,870) of the said account of nineteen thousand one hundred and seventy-one dollars and twenty-five cents, ($19,171 75.)

5 And petitioner further says that he was and is the sole owner of the said claim, and no other person has any claim thereto; that he knows of no action thereon in Congress, nor in any of the Executive Departments, except as herein stated.

Whereupon he claims and demands judgment against the United States for the said sum of ten thousand eight hundred and seventy dollars, being the balance due upon the said account hereinbefore stated.

PHILIP S. JUSTICE.

STATE OF PENNSYLVANIA.
City and County of Philadelphia, ss:

Before the undersigned, a commissioner of the Court of Claims, on this 16th day of October, A. D. 1867, personally appeared Philip S. Justice, the petitioner above named, and being duly sworn, deposes and says that no assignment or transfer of the claim mentioned in the foregoing petition, or of any part thereof or any interest therein, has been made, and that the petitioner is justly entitled to the amount therein claimed from the United States, after deducting all just credits and offsets, and that he believes the facts stated in said petition are true.

CHARLES H. T. COLLIS,
Commissioner of the Court of Claims.

J. HUBLEY ASHTON,
For Claimant, 615 Walnut St., Philadelphia, Pa.

6 EXHIBIT A.

Proposal to furnish arms.

PHILADELPHIA, *August 12th*, 1861.

I propose to supply the Ordnance Department of the United States with four thousand rifled muskets, calibre $\frac{69}{100}$ of an inch, similar in style and finish to the sample deposited with you, at twenty dollars each.

In all the month of September I will deliver one thousand, and each month thereafter, until 1st January, 1862, I will deliver one thousand of above arms.

I will also engage to supply at least five hundred cavalry sabres of best finish, subject to Government inspection and approval, at six dollars and seventy-five cents each, provided an order for at least five thousand shall be given me at one time. If it is necessary that an increased quantity be produced each week, it can be done. I will want about two to three weeks' notice in commencing these sabres.

I have, to arrive by the steamer of 4th August from Southampton, six hundred and eighty (680) rifles of the Chasseur de Vincennes, new pat-

tern. They have the peculiar style of sabre blade usually attached to such arms, and are such as shown you. The barrels are thirty-one inches long, and the calibre as usual, about $\frac{58}{100}$ of an inch. These I will sell in bond at ($22 50) twenty-two dollars and fifty cents each. I shall have the same quantity probably shipped by steamer of 1st September; but of this am not positively certain.

Very respectfully,

PHILIP S. JUSTICE.

To Lieutenant T. J. TREADWELL.

7 EXHIBIT B.

Acceptance of proposal.

FRANKFORD ARSENAL, *August 17th*, 1861.

P. S. JUSTICE, Esq., *Phila.*

SIR: I am authorized by the Ordnance Department to accept your proposal of August 12th, to furnish for the United States four thousand rifled muskets, calibre $\frac{58}{100}$ of an inch, equal in all respects to the sample deposited with me, at twenty dollars each, packed in suitable boxes of twenty each for transportation. The whole order to be filled by the 1st day of January, 1862, and at the rate of one thousand per month, after the 1st of September.

Also, five thousand sabres like the pattern, U. S. cavalry sabre, subject to Government inspection, at six dollars and seventy-five cents each, and packed in suitable boxes of fifty each for transportation. The whole order for sabres to be delivered at the rate of five hundred per week, after the 1st day of September, until completed.

It being understood that if the muskets and sabres are not delivered within the time specified, the Government will be under no obligations to take them; but may or may not do so, at its pleasure.

Please notify me of your acceptance of the above order and conditions, in writing, and push the work forward with dispatch.

Very respectfully, your obedient servant,

T. J. TREADWELL,
First Lieutenant of Ordnance.

8 EXHIBIT C.

Extension of time for delivery of arms.

ORDNANCE OFFICE, *Washington, Jan. 6th*, 1862.

PHILIP S. JUSTICE, Esq., *Phila., Pa.*

SIR: For the reasons stated in your letter of the 1st inst., the extension of time, sixty days, for the delivery of your rifled arms and sabres to Lieutenant Treadwell, is granted. Lieutenant Treadwell is also authorized to accept your proposition for 800 revolvers, at $18 each, provided they are found, on inspection, to be of satisfactory kind and quality for the military service.

Respectfully, your obedient servant,

JA'S W. RIPLEY,
Brigadier General.

EXHIBIT D.

Certificate of inspection and receipt for arms.

I hereby certify that I have, between January 27th and February 15th, 1862, inspected and approved three hundred and fifty (350) rifles, with sword bayonets, four hundred and seventy-two (472) rifled muskets, with angular bayonets, three hundred and sixty-two (362) cavalry sabres, and ten (10) Whitney's revolving pistols, with appendages, purchased of Mr. Philip S. Justice, of Philadelphia, for the United States Ordnance Department, under orders dated Frankford Arsenal, August 12th and 17th, 1861, and instructions dated Ordnance Office, August 16th, 1861, and January 6th, 1862.

9 And I further certify that the said rifles, rifled muskets, sabres, and pistols are good, serviceable arms, fit in all respects for use in the field, to be paid for at the rate of twenty dollars ($20) each for the rifles and rifled muskets, six dollars and seventy-five cents ($6 75) each for the cavalry sabres, and eighteen dollars ($18) each for the Whitney revolving pistols, including appendages, packed in seven (7) boxes, valued at seventy-five cents ($0 75) each, and forty-one (41) boxes, valued at two dollars and fifty cents ($2 50) each.

Given under my hand, at the Frankford Arsenal, this 19th day of March, 1862.

T. J. TREADWELL,
First Lieutenant of Ordnance.

Recapitulation.

350 rifles, with sword bayonets.
472 rifled muskets, with angular bayonets.
362 cavalry sabres.
10 Whitney's revolving pistols, with appendages.

Received, Frankford Arsenal, Pa., February 15th, 1862, from Mr. Philip S. Justice, of Philadelphia, 48 packing-boxes, containing the above-mentioned 350 rifles, with sword bayonets, 472 rifled muskets, with angular bayonets, 362 cavalry sabres, and 10 Whitney's revolving pistols, with appendages.

T. J. TREADWELL,
First Lieutenant of Ordnance.

(Triplicates.)

10 *United States to Philip S. Justice, Dr.*

350 rifles, with sword bayonets, @ $20	$7,000 00
472 rifled muskets, angular bayonets, @ $20	9,440 00
362 cavalry sabres, @ $6 75	2,443 50
10 Whitney's revolving pistols, @ $18 00	180 00
41 boxes, @ $2 50	102 50
7 boxes, @ 75 cts	5 25
	$19,171 25
Received December 9th and 13th, '62	8,301 25
Yet due	$10,870 00

11 In the United States Court of Claims, December term, A. D. 1867.

PHILIP S. JUSTICE
vs.
THE UNITED STATES. } No. 2957.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth, and avers that the said United States are indebted to the said claimant in the sum of $10,870 00, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the U. S.

12 In the Court of Claims.

PHILIP S. JUSTICE
vs.
THE UNITED STATES. } 2957.

And now, to wit, 23d of May, A D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Philip S. Justice have, and recover of and from the United States the sum of ten thousand eight hundred & seventy dollars no cents, ($10,870 00.)

By the court:

A true copy of record.

13 In the Court of Claims, Dec. term, 1869.

PHILIP S. JUSTICE
vs.
THE UNITED STATES. } 2957.

The defendants come and take an appeal in this case to the Supreme Court of the United States.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in the clerk's office 23 May, 1870.

Ordered, That the appeal of the defendants in the case of Philip S. Justice vs. The United States, 2957, be allowed.

By the court:

23d MAY, 1870.

14 The findings of fact and the conclusions of law on said facts on which the court founded its judgment in the case of—

PHILIP S. JUSTICE
vs.
THE UNITED STATES. } 2957.

This action is brought to recover $10,870, which is alleged to be due on a certain voucher for $19,171 25 issued and delivered to the claimant on the 19th of March, 1862, at Frankford arsenal, Philadelphia, by T. J. Treadwell, first lieutenant of ordnance, for certain rifles, rifled muskets, cavalry sabres, and revolving pistols furnished the United States under contracts with the Ordnance Department.

On the 8th of December, 1862, under a decision of what is known as the "Holt-Owen Commission," the claimant received and receipted
15 for the sum of $8,301 25, awarded him; and this suit is now brought to recover the balance on the $19,171 25 still claimed to be due and unpaid on said vouchers.

Under the recent rules of the Supreme Court, both parties have submitted their respective findings of facts, which the court has carefully examined, and drawn from the record the following findings:

1. The subjoined proposition was addressed by the claimant to Lieutenant T. J. Treadwell, then commanding Frankford Arsenal, in Philadelphia.

"PHILADELPHIA, *August 12th*, 1861.

"I propose to supply the Ordnance Department of the United States with four thousand rifled muskets, calibre $\frac{69}{100}$ of an inch, similar in style and finished to the sample deposited with you, at twenty dollars each.

"In all the month of September, I will deliver one thousand, and each month thereafter until 1st of January, 1862, I will deliver one thousand of above arms.

16 "I will also engage to supply at least five hundred cavalry sabres of best finish, subject to Government inspection and approval, at six dollars and seventy-five cents each, provided an order for at least five thousand shall be given me at one time. If it is necessary that an increased quantity be produced each week, it can be done. I will want about two to three weeks' notice in commencing these sabres.

"I have, to arrive by the steamer of 4th August, from Southampton, six hundred and eighty (680) rifles of the Chasseur de Vincennes, new pattern. They have the peculiar style of sabre blade usually attached to such arms, and are such as shown you. The barrels are thirty-one inches long, and the calibre as usual about $\frac{69}{000}$ of an inch. These I will sell in bond at ($22 50) twenty-two dollars and fifty cents each. I shall have the same quantity probably shipped by steamer of 1st Sep-
17 tember, but of this am not positively certain.

Very respectfully,

PHILIP S. JUSTICE.

To Lieutenant T. J. TREADWELL.

To this proposition the following correspondence took place, in which we find the contract.

"FRANKFORD ARSENAL, *August 13th*, 1861.

"General J. W. RIPLEY,
"*Ordnance Office, Washington, D. C.*

"GENERAL: I have the honor to state that I have accepted the proposal of Mr. Justice, of Philadelphia, to furnish the United States one thousand rifles, calibre .58, with sword bayonets, five hundred to be delivered in ten days, and the balance by the 1st day of September, at the rate [of] $20 a piece, and $1 50 for packing-boxes, to be inspected after a sample furnished me. These, I think, are fine arms, and, in my opinion, much the best I have seen offered at so low a price. I also enclose a proposition from Mr. Justice to furnish rifle-muskets,
18 calibre .69, and sabres. I have examined a sample of the musket, and it is a good, serviceable arm, calibre .69, clasp-bayonet, long range sight, original percussion barrel, and well finished. I think it would be desirable to secure these arms. Mr. Justice's proposition is explicit in point of time and numbers, and I respectfully submit it for your decision. Some of the arms furnished by Mr. Pondir have no half-cock; equal to the sample in other respects. Shall these be received or rejected?

"Respectfully, your obedient servant,

"T. J. TREADWELL,
"*1st Lieutenant of Ordnance.*

"ORDNANCE OFFICE, WAR DEPARTMENT,
"*Washington, August 16th*, 1861.

"Lieutenant T. J. TREADWELL,
Frankford Arsenal.

"SIR: Your letter of the 13th instant is received. You are authorized to accept Mr. P. S. Justice's proposition of 12th August, for four thousand rifled muskets, calibre 69, and five thousand cavalry
19 sabres, with the express condition that they are to be delivered in or within the time specified; otherwise, the Government is to be under no obligation to take them, but may or may not do so at its pleasure. Make no agreement for arms to arrive. The arms of Mr. Pondir, or any others, without the half-cock, will not be safe for use, and should not be received.

"Respectfully, your obedient servant,

"JA'S W. RIPLEY,
"*Brevet Brigadier General.*

"FRANKFORD ARSENAL, *August 17th*, 1861.

"P. S. JUSTICE, Esq., *Philadelphia.*

"SIR: I am authorized by the Ordnance Department to accept your proposal of August 12th, to furnish for the United States four thousand rifled muskets, calibre $\frac{69}{100}$ of an inch, equal in all respects to the sample deposited with me, at twenty dollars each, packed in suitable boxes of twenty each, for transportation. The whole order to be filled by
20 the 1st day of January, 1862, and at the rate of one thousand per month after the 1st of September. Also, four thousand sabres, like the pattern, U. S. cavalry sabre, subject to Government inspection, at six dollars and seventy-five cents each, and packed in suitable boxes of fifty each, for transportation. The whole order for sabres to be delivered at the rate of five hundred per week after the 1st day of September, until completed.

"It being understood that if the muskets and sabres are not delivered

within the time specified, the Government will be under no obligation to take them, but may or may not do so, at its pleasure. Please notify me of your acceptance of the above order and conditions, in writing, and push the work forward with dispatch.

"Very respectfully, your obedient servant,

"T. J. TREADWELL,
"*First Lieutenant of Ordnance.*"

A similar contract to furnish the United States 1,000 rifles,
21 calibre $\frac{58}{100}$ of an inch, with sword bayonets, at the rate of $20 each, and to be inspected after a sample arm furnished by the contractor to Lieutenant Treadwell, was also entered into between the parties. Subsequently, the time for the delivery of the arms was extended sixty days, and the contract enlarged so as to include 800 revolvers, at $18 each, provided they were found, on inspection, to be of satisfactory kind and quality for the military service.

2. Under these agreements, the claimant delivered to the United States at the Frankford Arsenal, from time to time, 2,469 rifles, with sword bayonets, calibre $\frac{58}{100}$ of an inch; and 2,174 rifled muskets, calibre $\frac{69}{100}$ of an inch, with angular bayonets, all of which were inspected, as delivered and received, by Lieutenant Treadwell, under his official signature that they had been duly inspected and approved.

22 These arms, furnished by claimant, were not, in all respects, similar to the sample arm, but on an average not inferior to it; which was far from being a standard or first-class arm of the United States. It was not equal to the Springfield rifle. And the Justice arms were far from being a first-class arm.

4. All the arms which were from time to time inspected and approved, except 350 rifles, with sword bayonets, 472 rifled muskets, with angular bayonets, 362 cavalry sabres, and 10 Whitney's revolving pistols, with appendages, were received and paid for as delivered, at the contract price.

5. On the 19th of March, 1862, and after all the arms, except those mentioned above, had been received and paid for, Lieutenant Treadwell issued and delivered to the claimant the following voucher:

"I hereby certify that I have, between January 27th and February 15th, 1862, inspected and approved three hundred and fifty (350)
23 rifles with sword bayonets, four hundred and seventy-two (472) rifled muskets with angular bayonets, three hundred and sixty-two (362) cavalry sabres, and ten (10) Whitney's revolving pistols, with appendages, purchased of Mr. Philip S. Justice, of Philadelphia, for the United States Ordnance Department, under orders dated Frankford Arsenal, August 12th and 17th, 1861, and instructions dated Ordnance Office, August 16th, 1861, and January 6th, 1862.

"And I further certify that the said rifles, rifled-muskets, sabres, and pistols are good, serviceable arms, fit in all respects for use in the field, to be paid for at the rate of twenty dollars ($20) each, for the rifles and rifled muskets, six dollars and seventy-five cents ($6 75) each for the cavalry sabres, and eighteen dollars ($18) each for the Whitney's revolving pistols, including appendages, packed in seven (7) boxes,
24 valued at seventy-five cents (75) each, and forty-one (41) boxes valued at two dollars and fifty cents ($2 50) each.

"Given under my hand at the Frankford Arsenal, this 19th day of March, 1862.

"T. J. TREADWELL,
"*1st Lieutenant of Ordnance.*"

The court also find the following fact, connected with inspection:

"FRANKFORD ARSENAL, *March 28th*, 1862.

"GENERAL: I have the honor to inclose herewith copies of statements of the inspection of rifles and rifle-muskets received at this arsenal from P. S. Justice, of Philadelphia. The bulk of these arms were inspected by Mr. Wilson, late foreman (I think) at Harper's Ferry armory, and after he left his situation here the inspection was made by Mr. Thomas Daffin, who had previously assisted Mr. Wilson. These statements show the manner in which the inspection was made, and the opinion of the inspectors as to their serviceableness and fitness
25 for use in the field. My instructions to them were to inspect the arms and reject all that, in their opinion, were not good and serviceable, and in all respects fit for use in the field. Having entire confidence in their ability and integrity I think these instructions were complied with. These arms were offered to me at a time when the demand for arms (especially rifled arms) was most imperative, and it was deemed desirable to accept them, to meet in part the pressing demand. Comparing the arms with those of our own manufacture, none would pass inspection, and it was not supposed they should be subjected to any such standard, but that all that were passed on inspection would prove good and serviceable, was believed. Examining two boxes of these arms in store I do not find them to have the radical defects complained of, nor can I account for the very different report of their
26 inspection at Camp Hamilton, and that made to me by my inspectors; especially I cannot understand how the arms should *gua*ge correctly here, and be found there to vary between .65 and .70 inch in caliber. I find the sights are soldered on, but on tapping twenty of them with a hammer sufficiently hard to dent them, some were found to come off, or were started.

"The letters inclosed with yours of the 24th instant, are herewith returned.

"Very respectfully, your obedient servant,

"T. J. TREADWELL,
"*First Lieutenant of Ordnance.*

"General JAMES W. RIPLEY,
Chief of Ordnance, Washington, D. C."

"Received, Frankford Arsenal, Penn., February 15th, 1862, from Mr. Philip S. Justice, of Philadelphia, 48 packing boxes, containing the above-mentioned 350 rifles with sword bayonets; 472 rifled muskets with angular bayonets; 362 cavalry sabres; and (10) Whitney's revolving pistols with appendages.

27 "T. J. TREADWELL,
"*First Lieutenant of Ordnance.*"

(Triplicates.)

"*United States to Philip S. Justice, Dr.*

"350 rifles with sword bayonets, at $20	$7,000 00
"472 rifled muskets with angular bayonets, at $20	9,440 00
"362 cavalry sabres, at $6 75	2,443 50
"10 Whitney's revolving pistols, at $18	180 00
"41 boxes, at $2 50	102 50
"7 boxes, at 75 cents	5 25
	"$19,171 25"

6. Three regiments, the 58th, 88th, and 91st Pennsylvania Volunteers had been armed with the muskets delivered by the claimant, and sometime after these arms were in their hands serious complaints came up from all three of the regiments to the Ordnance Department that these arms were unserviceable.

7. In response to these complaints, reinspections of the arms
28 in the hands of these three regiments were directed, which resulted as shown by the following reports of the several inspecting officers:

"FORT MONROE ARSENAL, VA.,
"*March 20th*, 1862.

"SIR: In compliance with verbal orders received from you, I have visited Camp Hamilton and inspected the arms of the 58th Regiment Pennsylvania Volunteers, stationed at that post.

"This regiment is armed with rifled muskets, marked on the barrel 'P. S. Justice, Philadelphia,' and vary in calibre from .65 to .70. I find many of them unserviceable and irreparable, from the fact that the principal parts are defective. Many of them are made up of parts of muskets to which the stamp of condemnation has been affixed by an inspecting officer. In many cases there is evidence of an attempt having been made to obliterate the letters 'C' and 'R.' None of the stocks have ever been approved by an officer, nor do they bear the initials of any inspector. They are made of soft, unseasoned wood, and are
29 defective in construction. A few of the barrels have been in service before, and bear the usual marks 'V,' 'P,' and 'U. S.' Most of the rest, however, abound in flaws, and the rifling in nearly all is but a poor attempt. The grooves extend in many cases but a few inches from the muzzle, leaving the remainder of the barrel with a smooth bore. The sights are merely soldered on the barrel, and come off with the gentlest handling. Imitative screw heads are cut on their bases. The bayonets are made of soft iron, and, of course, when once bent, remain 'set.' In some instances where the bayonets have been marked 'C,' deep indentations have been made in the attempt to erase this letter. The locks are of very poor construction—screws, springs, and swivels being unserviceable. The guard bows are insecurely fastened, and can be separated from the stock with ease. There are no band springs, and when the stock is dry the bands drop off.
30 The thread of the screw on the rammer is improperly cut. On account of the difference of calibre existing in these arms, it is impossible to supply them with suitable ammunition.

"I would respectfully recommend that the entire issue of these arms be condemned, and that these facts be made known to the parties who made the contract.

"I have the honor to be, very respectfully, your obedient servant,
"WILLIAM H. HARRIS.
"*Second Lieutenant of Ordnance.*

"T. G. BAYLOR,
"*First Lieutenant of Ordnance.*"

The inspection of the arms in the hands of the 88th Pennsylvania, furnished by complainant, was made by Tho's D. Doubleday, col. 4th Regiment U. S. Artillery, who reported that—

"The arms which were manufactured at Philadelphia, Pennsylvania, are of the most worthless kind, and have appearance of having
31 been manufactured from old condemned muskets. Many of them

burst; hammers break off; sights fall off when being discharged. The barrels are very light, not exceeding one-twentieth of an inch in thickness, and only rifled from four to nine inches from the muzzle. The stocks, many of them, are old, newly mounted, and the balance made of green wood, which has shrunk, so as to leave the bands and trimmings loose. The bayonets are of so frail texture that they bend like lead, and many of them break off when going through the bayonet exercise. You could hardly conceive of such a worthless lot of arms, totally unfit for service, and dangerous to those using them.

"I am, very respectiully, your obedient servant,

"THOMAS D. DOUBLEDAY,
"*Col. 4th Regiment New York Artillery.*

"Capt. E. P. HALSTEAD,
"*Acting Assistant Adjutant General.*"

32 The inspection of the 91st Regiment's arms furnished by claimant, was made by John Buford, assistant inspector general, who reported as follows:

"WASHINGTON, D. C., *April 9th*, 1862.

"MAJOR: I have the honor to report that, in obedience to instructions from Brigadier General Wadsworth, I inspected yesterday the arms in the hands of the 91st Regiment Pennsylvania Volunteers and found that the regiment has 800 guns called Enfield rifles, furnished to the Government by P. S. Justice of Philadelphia.

"I examined about seventy of these guns that had become unserviceable from various causes, each one showing some defect in material or manufacture. Many had burst; many cones had been blown out; many locks were defective; many barrels were rough inside from imperfect boring, and many had different diameters of bore in the same barrel.

33 "These guns have been in the hands of the regiment about four months, and have been fired but little. At practice with blank cartridges one gun burst. At target practice so many burst that the men became afraid to fire them. At present it is with difficulty that the men are made to charge their arms for guard duty; those who do load them throw away part of the powder.

"These arms seem to have been gotten up in a hurry from old material, and altered without any reference to service or safety. Most of the guns have the United States old musket lock, and in many cases only one of the screws for attaching it to the gun is used. Judging from what I saw of the guns I pronounce them unserviceable and unsafe.

"I am very respectfully, your obedient servant,

"JOHN BUFORD,
"*Assistant Inspector General.*

"Major T. TALBOT,
"*Assistant Adjutant General.*"

34 8. On the 20th of May, 1862, the Chief of the Ordnance Bureau informed the Secretary of War that some of the arms purchased from claimant were not serviceable arms, and that he deemed it his duty to with'old the payment of one of his vouchers amounting to $19,171 25, until the matter could be investigated. With this letter the Chief of Ordnance submitted to the Secretary all the papers in his hands on the subject, and suggested that the whole matter be referred

to the commission constituted by the Secretary of War, "to audit and adjust all contracts, orders, and claims on the War Department in respect to ordnance, arms, and ammunition" then sitting in Washington.

9. On the same day, and in pursuance to said recommendation, the Secretary referred the voucher of March 19th, 1862, and all the papers and reports transmitted to him by the Chief of Ordnance to the commission, who took cognizance of the whole case and proceeded to
35 investigate the character and quality of the arms furnished by the claimant, which had been taken out of the hands of the troops and deposited in the U. S. arsenals, armories, &c. To that end the commission directed further inspections and comparisons with the sample arm, which resulted in reports found in the record, showing the arms in many respects defective, but on an average equal to the sample arm.

10. The claimant was in Washington during the session of the commission, and it is proven that he appeared before it at different times and was very persistant and energetic in presenting his claim. He offered no evidence, but presented several written arguments before the commission, and fourteen days after the commission had reported to the Chief of Ordnance their decision he succeeded in convincing them of an error in the report committed against him, which the commissioners corrected.

36 11. On the 6th of June, 1862, the commission decided as follows:

"The commission consider it proved that Mr. Justice has not fulfilled his obligation to furnish a 'serviceable' arm to the Government, but has been paid at the rate of $20 a gun for arms not suitable in workmanship or material for the public service, and judging from the character of arms purchased at $20, and from the prices paid usually for inferior arms during the period of delivery of these, that a price of $15 is an ample, if not excessive equivalent for such arms."

On this basis, the Chief of Ordnance directed the 2nd Auditor of the Treasury to settle the account of the claimant on his voucher of $19,171 25, and if the amount should not be sufficient to cover the alleged over-payments theretofore made, to deduct the difference from any
37 other account of the claimant pending in the office.

12. That, on the 20th day of June, 1862, the claimant, as before shown, appeared before the commissioners, and said to them that they had erred in stating in their said report that he had delivered the whole number of rifled-muskets contemplated by said contract. He also presented a statement of the actual deliveries of arms made by him under the orders referred to the commission. He also protested that, as his arms were accepted after inspection by Government authority, the Government could not rightfully decline to pay for all so accepted.

13. That, on the 25th of June, 1862, the commissioners made an additional report to the Chief of Ordnance, as follows:

"JUNE 25TH, 1862.

"It appears by a report from the Chief of Ordnance, dated June 24th, just received by the commission, that two thousand one hundred
38 and seventy-four rifle-muskets, calibre .69, and two thousand four hundred and sixty-nine rifles with sword-bayonets, calibre .58, have been received at Frankford Arsenal upon the orders now before us; and, of the two thousand four hundred and sixty-nine rifles with sword bayonets so received, no complaints of inferiority have been made, except of one kind without bands, the number of which cannot now be accurately obtained.

"The commission decide that no deduction be made except on the first-named class of arms, and direct that the payments heretofore made to Mr. Justice, for arms delivered at the Frankford Arsenal, be considered as 'on account'; and that, in a closing settlement of his accounts, $15 per gun only be allowed for two thousand one hundred and seventy-four rifle-muskets, and $20 per gun for two thousand four hundred
39 and sixty-nine rifles with sword-bayonets, furnished under the above orders, as per statement signed by Mr. Justice, and hereto attached.

"We are, sir, very respectfully, your obedient servant,

"J. HOLT,
"ROBERT DALE OWEN,
Commissioners.
"P. V. HAGNER,
"*Major of Ordnance, Assistant Commissioner.*

"To Brig. Gen'l J. W. RIPLEY,
"*Chief of Ordnance.*"

On June 30th, 1862, the Chief of Ordnance transmitted this additional decision to the 2nd Auditor, and instructed him to settle the said account of claimant for $19,171 25 on the basis of that decision, and on the 6th of December, 1862, the accounting officer of the Treasury stated the following account between the claimant and the United States:

40 "DR.

"*Philip S. Justice in account with the United States.*

"To appropriation:

"For this sum charged and allowed on 2,174 rifled muskets, calibre .69, being $20 a musket instead of $15, as per decision of Orduance commission, case No. 95, June 6th, 1862; amended June 25th, 1862	$10,870 00
"To balance carried down	8,301 25
	$19,171 25

"CR.

"By appropriation:

"For 350 rifles, calibre .58, and 472 rifled muskets, including 362 cavalry sabres, and 10 Whitney's revolving pistols, furnished under instructions from Ordnance Office to Lieutenant T. J. Treadwell, of ordnance, in August, 1861, and January, 1862, and delivered to him February 15th, 1862, as per account herewith	$19,171 25
"By balance due him	8,301 25

"TREASURY DEPARTMENT,
"SECOND AUDITOR'S OFFICE, *December 6th*, 1862.
"JNO. M. SIMS.

"TREASURY DEPARTMENT,
"SECOND COMPTROLLER'S OFFICE, *December 6th*, 1862.
"F. A. JENNINGS."

41 On the 8th of December, 1862, the claimant received from the Treasurer of the United States certificates of indebtedness, amounting to $6,000, and a Treasury draft for $2,301 25, amounting in all to $8,301 25, the receipt of which he acknowledged in letter to the Treasurer of the United States, as follows:

"1862.

"SIR: Have received your letter of draft, together with the following certificates of indebtedness, payable to blank, viz:

"No. 36,332 to No. '337, i. e. 6 of $1,000	$6,000 00
"Draft for balance remitted	2,301 25
"Amounting to	8,301 25

"Issued on war warrant No. 3,405 for that amount in favor of Philip S. Justice.

"Scale No. 12,051.

"Yours, &c.,

"PHILIP S. JUSTICE.

"F. E. SPINNER,

"*Treasurer of the United States.*"

4. The war warrant referred to above is as follows, viz:

42 "War Department warrant No. 3405. Appropriation.

"TREASURY DEPARTMENT.

"To the Treasurer of the United States, greeting:

"Pay to Philip S. Justice, Philadelphia, present, Adams Express Company, or order, out of the appropriation named in the margin, eight thousand three hundred and one dollars and twenty-five cents, due on settlement. Pursuant to requisition No. 9806 of the Secretary of War, dated 8th December, 1862, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor.

"For so doing this shall be your warrant.

"Given under my hand and seal of the Treasury, this 8th day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of independence the 87th.

[L. S.]

S. P. CHASE,
Secretary of the Treasury.

43 "Received for above warrant following draft:

"No. 8204 on Treasury	$2,301 25
"Certificates	6,000 00
	$8,301 25"

On these facts, as a conclusion of law, a majority of the court held the claimant entitled to recover, and gave judgment in his favor for $10,870.

44 In the Court of Claims.

PHILIP S. JUSTICE
vs.
THE UNITED STATES. } No. 2957.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for defendants, for the allowance of an appeal, as filed in the clerk's office 23 May, 1870, and of the order of the court of 23 May, 1870, allowing the same; of the findings of fact and the conclusions of law on said facts on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 22d day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 438. The United States, appellants, vs. Philip S. Justice. Court of Claims. Filed 22d December, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
PHILIP S. JUSTICE. } No. 222.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
PHILIP S. JUSTICE.

No. 222.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

The suit of Philip S. Justice was brought in the Court of Claims to recover a balance of $10,870, alleged to be due him for certain arms alleged to have been furnished the United States under a contract with the ordnance department.

The Court of Claims gave judgment for the claimant for $10,870, from which this appeal is taken.

The facts of the case are set forth in the findings of the Court of Claims, and we submit that, from these, it appears that the court erred in granting judgment for the claimant:

First. Because his contract was not fulfilled; and

Second. Because he received payment in final settlement from the United States.

I.

On August 13, 1861, T. J. Treadwell, first lieutenant of ordnance, United States Army, wrote to General J. W. Ripley, then chief of ordnance at Washington, as follows:

[Extract.]

"I also enclose a proposition from Mr. Justice to furnish rifle muskets; calibre .69, and sabres. I have examined a sample of the musket, and it is a good, serviceable arm, calibre .69, clasp bayonet, long-range sight, original percussion barrel, and well finished." (Record, p. 8.)

On August 16, 1861, General Ripley authorized the acceptance of the proposition thus communicated, and on August 17, 1861, Lieutenant Treadwell wrote as follows:

[Extract.]

"P. S. JUSTICE, Esq., *Philadelphia.*

"SIR: I am authorized by the ordnance department to accept your proposal of August 12th, to furnish for the United States four thousand rifled muskets, calibre $\frac{69}{100}$ of an inch, equal in all respects to the sample deposited with me, at twenty dollars each, packed," &c. (Record, p. 8.)

The authority of the ordnance department was to procure muskets described by Lieutenant Treadwell as "a good, serviceable arm, calibre .69," &c., and Lieutenant Treadwell stipulated that they should be "equal in all respects to the sample deposited with" him. These conditions of the contract were not complied with. The inspection of the arms, as they were delivered at the Frankford arsenal, was left by Lieutenant Treadwell to

subordinates, (Record, p. 10,) and their defective character was not then reported to the ordnance department, but the 58th, 88th, and 91st Pennsylvania volunteers, having been armed with the muskets furnished by Justice, made serious complaints that the arms were unserviceable. (Record, p. 11.)

In response to these complaints, inspections of the arms in the hands of these regiments were directed, which resulted in reports from the inspecting officers, showing the worthless character of the arms. Lieutenant W. H. Harris reported as follows:

"SIR: In compliance with verbal orders received from you, I have visited Camp Hamilton, and inspected the arms of the 58th regiment, Pennsylvania volunteers, stationed at that post.

"This regiment is armed with rifled muskets, marked on the barrel 'P. S. Justice, Philadelphia,' and vary in calibre from .65 to .70. I find many of them unserviceable and irreparable, from the fact that the principal parts are defective. Many of them are made up of parts of muskets to which the stamp of condemnation has been affixed by an inspecting officer. In many cases there is evidence of an attempt having been made to obliterate the letters 'C' and 'R.' None of the stocks have ever been approved by an officer, nor do they bear the initials of any inspector. They are made of soft, unseasoned wood, and are defective in construction. A few of the barrels have been in service before, and bear the usual marks, 'V,' 'P,' and 'U. S.' Most of the rest, however, abound in flaws, and the rifling in nearly all is but a poor attempt. The grooves extend, in many cases, but a few inches from the muzzle, leaving the remainder of the barrel with a smooth bore. The sights are merely soldered on the barrel, and come off with the gentlest handling. Imitative screw-heads are cut on their bases. The bayonets are made of soft iron, and, of course, when once bent, re-

main 'set.' In some instances where the bayonets have been marked 'C,' deep indentations have been made in the attempt to erase this letter. The locks are of very poor construction—screws, springs, and swivels being unserviceable. The guard-bows are insecurely fastened, and can be separated from the stock with ease. There are no band springs, and when the stock is dry the bands drop off. The thread of the screw on the rammer is improperly cut. On account of the difference of calibre existing in these arms, it is impossible to supply them with suitable ammunition.

"I would respectfully recommend that the entire issue of these arms be condemned, and that these facts be made known to the parties who made the contract." (Record, p. 11.)

The arms of the 88th Pennsylvania regiment were inspected by Colonel Thomas J. Doubleday, those of the 91st Pennsylvania regiment by General John Buford, and their reports agree substantially with that of Lieutenant Harris; General Buford concluding his report by saying, "judging from what I saw of the guns, I pronounce them unserviceable and unsafe." (Record, p. 12.)

In calibre and quality, therefore, the arms were not according to contract. They were not serviceable, nor did they equal the sample furnished by the contractor; the Court of Claims having found, as a fact, that "these arms, furnished by claimant, were not, in all respects, similar to the sample arm," (Record, p. 9,) which, although qualified by the subsequent language of the court, nevertheless, goes to show a failure to comply with the condition of Lieutenant Treadwell's letter of August 17, 1861, which provides that the muskets shall be "equal in all respects to the sample deposited with" him. (Record, p. 8.)

These arms were furnished directly by the claimant. The presumption is that he knew their defective character, and he cannot take advantage of a nominal inspection at the arsenal by subordinates, to screen himself from the consequences of the careful inspections of the responsible officers whose reports are above referred to. The obligation of his contract with the United States was, not that his arms should pass an inspection, but that they should be of a certain calibre, quality, and standard, and this obligation he failed to fulfil.

He assented to the retention of the defective arms by the United States at a rate which, although less than the contract price, was fully equal to their value. He was not entitled to more.

1 Parsons on Contracts, 591, 592.

Germain *vs.* Burton, 3 Starkie, 581.

Cary *vs.* Gruman, 4 Hill, (N. Y.,) 625.

Dows *vs.* Durfee, 10 Barbour, 211.

Hitchcock *vs.* Hunt, 28 Conn., 343.

II.

"On the 20th of May, 1862, the Chief of the Ordnance Bureau informed the Secretary of War that some of the arms purchased from claimant were not serviceable arms, and that he deemed it his duty to withhold the payment of one of his vouchers, amounting to $19,171 25, until the matter could be investigated. With this letter, the Chief of Ordnance submitted to the Secretary all the papers in his hands on the subject, and suggested that the whole matter be referred to the commission constituted by the Secretary of War, 'to audit and adjust all contracts, orders, and claims on the War Department, in respect to ordnance, arms, and ammunition,' then sitting in Washington.

"On the same day, and in pursuance of said recommendation, the Secretary referred the voucher of March 19, 1862, and all the papers and reports transmitted to him by the Chief of Ordnance, to the commission, who took cognizance of the whole case, and proceeded to investigate the character and quality of the arms furnished by the claimant, which had been taken out of the hands of the troops and deposited in the United States arsenals, armories, &c.

"The claimant was in Washington during the session of the commission, and it is proven that he appeared before it at different times and was very persistent and energetic in presenting his claim. He offered no evidence, but presented several written arguments before the commission, and fourteen days after the commission had reported to the Chief of Ordnance their decision he succeeded in convincing them of an error in the report committed against him, which the commissioners corrected." (Findings of the Court of Claims, Record, pp. 12, 13.)

The result of the examination of Mr. Justice's claim by the commission, was a settlement by which he was allowed at the rate of $15 each for the defective arms. This was in full of his account, as will be seen by reference to the 13th finding of the court of claims. (Record, pp. 14, 15.)

Mr. Justice accepted the sum allowed, after having attended the meetings of the commission, and with full knowledge that it was intended as a final payment of his account, and by this action he was concluded from making any further claim on the United States.

The United States *vs.* Adams, 7 Wallace, 463.

The United States *vs.* Child, 12 Wallace, 232.

The United States *vs.* Clyde, 13 Wallace, 35.

This final settlement was made in December, 1862.

The petition in this case was sworn to on the 16th of October, 1867, and there is no evidence of any protest or complaint on the part of the claimant until the filing of this petition. He acquiesced in the final settlement for nearly five years.

GEORGE H. WILLIAMS,
Attorney General.
WILLIAM McMICHAEL,
Assistant Attorney General.

Supreme Court United States.

DECEMBER TERM, 1872.

UNITED STATES, Appellants,
vs.
PHILIP S. JUSTICE.
} No. 222.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE.

J. HUBLEY ASHTON,
Of Counsel.

McGill & Witherow, Printers, 1107 E street, Washington, D. C.

In the Supreme Court of the United States.

DECEMBER TERM 1872.

UNITED STATES, Appellants,
vs.
PHILIP S. JUSTICE.
No. 222.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

Mr. Justice, of Philadelphia, in the month of August, 1861, entered into a contract with the Ordnance Department, to furnish the United States 4,000 rifled muskets, calibre $\frac{69}{100}$ of an inch, equal to a certain sample deposited with Lieut. Treadwell, at the Frankford Arsenal, at the price of $20 each.

He agreed to furnish at the same price 1,000 rifles, $\frac{58}{100}$ of an inch calibre, and also to supply cavalry sabres and revolvers, at certain prices, subject to the inspection of the proper officers of the Government.

These arms were deliverable by the terms of the contracts in certain monthly or weekly installments.

In execution of the contracts for the guns, the claimant delivered at the Frankford Arsenal, from time to time, 2,174 rifled muskets, calibre 69, and 2,469 rifles, calibre 58; all of which were inspected by Lieut. Treadwell, and received under his official certificate that they had been duly inspected and approved.

Before the 19th of March, 1862, all these guns had been thus received and approved; and, with the exception of the lot to which we shall presently refer, had also been paid for by the United States at the contract price of $20 each.

On that day, (March 19,) Lieut. Treadwell issued and delivered to Mr. Justice, for the last installment of these arms, the following:

VOUCHER.

I hereby certify, that I have, between January 27 and February 15, 1862, inspected and approved three hundred and fifty (350) rifles with sword bayonets, four hundred and seventy-two (472) rifled muskets with angular bayonets, three hundred and sixty-two (362) cavalry sabres, and ten (10) Whitney's revolving pistols, with appendages, purchased of Mr. Philip S. Justice, of Philadelphia, for the United States Ordnance Department, under orders dated Frankford Arsenal, August 12 and 17, 1861, and instructions dated Ordnance Office, August 16, 1861, and January 6, 1862.

And I further certify, that the said rifles, rifled muskets, sabres, and pistols, are good serviceable arms, fit in all respects for use in the field. To be paid for at the rate of twenty dollars ($20) each for the rifles and rifled muskets, six dollars and seventy-five cents ($6 75) each for the cavalry sabres, and eighteen dollars ($18) each for the Whitney's revolving pistols, including appendages; packed in seven (7) boxes, valued at seventy-five cents (75) each, and forty-one (41) boxes, valued at two dollars and fifty cents ($2 50) each.

Given under my hand at the Frankford Arsenal, this 19th day of March, 1862. T. J. TREADWELL,
1st Lieutenant of Ordnance.

Recapitulation.

350 rifles, with sword bayonets.
472 rifled muskets with angular bayonets.
362 cavalry sabres.
10 Whitney's revolving pistols, with appendages.

Received, Frankford Arsenal, Pennsylvania, February 15, 1862, from Mr. Philip S. Justice, of Philadelphia, 48 packing boxes, containing the above-mentioned 350 rifles, with sword bayonets; 472 rifle muskets, with angular bayonets; 362 cavalry sabres; and (10) Whitney's revolving pistols, with appendages. T. J. TREADWELL,
[Triplicates.] *First Lieutenant of Ordnance.*

UNITED STATES	TO PHILIP S. JUSTICE,	DR.
350 rifles, with sword bayonets, at $20		$7,000 00
472 rifled muskets, with angular bayonets, at $20		9,440 00
362 cavalry sabres, at $6.75		2,443 50
10 Whitney's revolving pistols, at $18		180 00
41 boxes, at $2.50		102 50
7 boxes, at 75 cents		5 25
		$19,171 25

On the 8th of December, 1862, Mr. Justice received from the Treasurer of the United Strtes certificates of indebtedness amounting to $6,000, and a Treasury draft for $2,301 25, amounting in all to the sum of $8,301 25; the receipt of which he acknowledged in a letter to General Spinner.

No other receipt was ever given by Mr. Justice for the amount, or any portion of the amount, of the above voucher of March 19.

The amount thus received left a balance of that voucher amounting to $10,870 unpaid; and to recover this balance, Mr. Justice brought the present suit.

The record discloses the circumstances under which this balance was, and has been, withheld from him.

They are these:

Certain regiments in the field, among them the 50th, 88th, and 91st Pennsylvania volunteers, had been armed with the muskets purchased from the Claimant, and sometime afterwards the Ordnance Department received complaints from them, alleging that the arms were unserviceable.

Reinspections of the arms in the hands of these troops, as well as of those remaining in store at Frankford Arsenal, were ordered.

The latter inspection was made by Lieutenant Treadwell in person.

In his report to General Ripley, of March 28, 1862, (see Rec., p. 10,) that officer certifies to the ability and integ-

rity of the armorers who had conducted the original inspection, and states:

"My instructions to them were to inspect the arms, and reject all that, in their opinion, were not good and serviceable, and in all respects fit for use in the field. Having entire confidence in their ability and integrity, I think these instructions were complied with.

"These arms were offered to me at a time when the demand for arms (especially the rifled arms) was most imperative, and it was deemed desirable to accept them, to meet, in part, the pressing demand.

"Comparing the arms with those of our own manufacture, none would pass inspection, and it was not supposed that they should be subjected to any such standard; but that all that were passed on inspection would prove good and serviceable, was believed.

"Examining two boxes of these arms in store, *I do not find them to have the radical defects complained of*, nor can I account for the very different report of their inspection at Camp Hamilion, and that made to me by my inspectors; especially I cannot understand how the arms should gauge correctly here, and be found there to vary between .65 and .70 inches in calibre. I find the sights are soldered on, but on tapping twenty of them with a hammer sufficiently hard to dent them, *none were found to come off, or even started.*"*

On March 20, 1862, the Chief of Ordnance informed the Secretary of War that he deemed it his duty to withhold payment of the above voucher until the matter could be investigated. He submitted to the Secretary all the papers on the subject, and suggested that the matter be referred to the two gentlemen (Messrs. Holt and Owen) who had been authorized by the Secretary to audit and adjust all claims and contracts in respect to ordnance, arms, and ammunition.

This recommendation was approved by the Secretary of War, who referred the voucher of March 19, together with all the papers and reports received from the Ordnance Office, to this Committee, who were then sitting in Washington.

Assuming, contrary to the fact, that the Claimant had

*The printed Transcript (p. 10) has it, "Some were found to come off, or were started." This is a misprint, or a mistake in copying the Report from the printed evidence in the Court of Claims.

stipulated to furnish a "serviceable" arm to the Government, the Committee proceeded to investigate the character and quality of the Claimant's arms. The most of them had been used in the field, and were now taken out of the hands of the troops.

Their first report was condemnatory of *all* the guns, as "not suitable in workmanship or material for the public service." The second report corrected this error, and found that the "complaints of inferiority" related chiefly to the 2,174 rifled muskets, calibre .69.

Accordingly, they decided, in their second report, that the payments theretofore made to Mr. Justice be considered as "on account," and that $15 per gun only be allowed for the 2,174 rifled muskets, instead of $20, the contract price.

In their first report they had decided that $15 was an ample equivalent for *all* the arms—the 2,469 rifles, as well as the 2,174 rifled muskets.

It seems that the 2d Auditor was instructed by the Chief of Ordnance to settle the Claimant's account on the voucher of March 19 for $19,171 25, on "the basis of this decision;" and he accordingly stated an account between Mr. Justice and the United States, in which he charged the contractor as with an overpayment of $5 each for *all the rifled muskets already paid for at the contract price of* $20, and deducted $5 from the contract price of each of the muskets embraced in the voucher of March 19. As the whole number of these arms was, as has been seen, 2,174, the amount deducted from the face of that voucher was thus $10,870.

The difference, $8,301 25, was the amount received by Mr. Justice from the Treasurer of the United States, as before stated.

ARGUMENT.

Only two questions can be made in this case:

I. Whether the Claimant is barred from maintaining this action by reason of having received a part of the amount due upon the voucher of March 19? And if not—

II. Whether, upon the facts found by the Court of Claims, the Government has any legal defence to this suit for the contract price of the arms?

I.

First. It is obvious that the facts of this case do not bring it within the principles of the decisions in the *Adams*, *Child*, and *Clyde* cases.

1. The Claimant here had an executory contract, the validity and regularity of which nobody ever doubted, to furnish a number of arms of a certain description at a fixed price. It was made upon the exhibition of a sample, which proved satisfactory to the agents and experts of the Government. The arms were to be inspected by those agents and experts according to that sample; and they were to be rejected if found unsatisfactory, and accepted if found satisfactory. Arms of the kind contracted for were delivered, and the requisite number, upon full inspection by the experts of the United States, was accepted and appropriated to the contract.

Nobody ever suggested that any fraud or collusion occurred in the transaction or any part of it. The arms were not only accepted, but the most of them actually distributed to and used by troops in the field. Regular vouchers, officially executed by the inspecting officer, were issued to the contractor. All these vouchers, except one, were duly paid, and the transactions closed.

Complaints being made against the arms by the troops who had used them, the Ordnance Bureau stopped the payment of this voucher. The arms yet in store were *reinspected* by Lieutenant Treadwell, a trusted officer of the Ordnance Department, who made the contract; and he *again* certified to their character and quality as *conformable to the contract*. (Record, p. 10.) Then an investigation is undertaken by a board of civilians. Inspections directed by them also show the arms to be on an average equal to the sample. (Record, p. 13.) They first make a report, con-

demning all the Claimant's arms as unserviceable, and suggesting a deduction from the whole contract price of the entire lot, and then, nearly a month after, they take this back, and find that only about half of the arms had been the subject of complaint. (Record, p. 13.) This report, on its face, is founded on a total misconception of the contract of the Claimant, viz: that it was to furnish what they call a "serviceable" arm, when he expressly stipulated to supply an arm equal to the sample. When the Claimant exposes the error of the first report, he protests against any repudiation of the contract on the part of the Government. (Record, p. 13.) Afterwards he receives, in due course of business, from the Treasury Department, a draft for $2,301 25 and certificates of indebtedness for $6,000 00, and, in a letter to the United States Treasurer, he *acknowledges the receipt of this draft and these certificates, amounting in all to* $8,301 25.

He gives no other receipt or acquittance.

He is not required to take the Treasury draft and the certificates of indebtedness, or the amount payable on them, in full satisfaction of the whole claim, and he never acknowledged that amount to be in full satisfaction of the whole claim. No such condition is imposed or fulfilled.

Plainly, then, the doctrine of the Frémont contract cases and the Clyde case does not apply.

In *United States* v. *Child*, (12 Wallace, 245,) Mr. Justice Miller rests the decision upon the effect of the *receipt in full*, required by the Government before payment, and executed by the Claimant contemporaneously with the payment of the amount allowed. The words of that learned judge are carefully chosen and expressive: "If there had been no reference to, and finding by, the Commission, it would still remain true that here was a claim, the justice of which had been denied, and the amount that was due on it had been in dispute nearly two years. The Government finally says to the Claimant: 'We will pay you a certain sum on this disputed claim, *provided you will take it in full satisfaction af the whole;*' when, without intimidation, with-

out fraud or concealment on the part of the Government, without protest or objection on their part, the Claimants accept the money offered, and sign a receipt acknowledging it to be in full of the whole claim. Is not *this* a legal and binding compromise of the disputed demand? Is *it* not a voluntary adjustment of the matter in dispute between the parties?"

And on page 243 the doctrine of the opinion is stated with equal clearness: "We lay out of view in this, as in the Adams case, the receipts which they gave, under protest, in order to regain possession of their vouchers. But we cannot disregard the finding that, after Congress had appropriated money to pay the sums found due, the Claimants received the amount so allowed, and signed on each voucher a receipt, whereby they acknowledged having received said reduced amount '*in full satisfaction of the above account.*' And that at the time of receiving this payment they made no formal objection or protest, but *were required to, and did, sign the receipt above described.*"

Mr. Justice Bradley, in *Clyde's* case, (13 Wall., 37,) rests the decision there also upon the receipt in full. "Under these circumstances," he says, "the final determination of the Claimant to take the balance of the account, as made out on the basis contended for by the Government, and his *giving a receipt in full*, is clear evidence that he agreed to take that balance in satisfaction of the claim; and *this* fact, under the circumstances of the case, concludes him from making any further demand."

In the case at bar, the Claimant receipted for what he got, and for no more; and he never, in any manner, agreed to take that in full discharge of his demand.

2. But there are other and manifest legal differences between this case and the preceding cases, which render the decisions in the latter totally inapplicable to the former.

(*a*) In the first place, the nature and character of the demand here involved were different from those asserted in the cases cited.

The present demand here was for an *ascertained* and

liquidated, and an *undisputed* amount. It was liquidated by the legal voucher of the proper officer, acknowledging the fact of the contract, the receipt of the arms, their character as in compliance with the contract, the price payable, and the sum due. It was liquidated in the full and absolute sense of the rule of the common law, that the payment of a smaller sum *cannot* be an accord and satisfaction of a larger debt which is fixed and liquidated.

By that rule, such a debt as this cannot be discharged by the payment of a less sum, even though it be acknowledged to be received in full satisfaction. (Cumber *v.* Wane, 1 Smith's L. C., Part 1, p. 556.) *A fortiori*, it cannot be discharged by the receipt of a less sum, which is *not* agreed to be taken in full satisfaction.

Neither in the Adams, nor the Child, nor Clyde case was the claim liquidated in any absolute sense. In the Child case, Mr. Justice Miller speaks of the claim as "an unliquidated and controverted demand." (12 Wall., 244.) And in the Clyde case the amount was not liquidated until the account was stated by the quartermaster at the reduced rate of the Quartermaster General. (13 Wall., 36.)

But this was also an *undisputed* claim—undisputed, we mean, in a legal sense. There was and could be no difference between the parties in regard to the fact of the contract, or as to its validity and binding force, or as to the delivery, due inspection, and receipt of the property, or as to the liquidation by the ordinance officer, or as to the good faith of the Claimant. The agreement was in writing—made under orders of the Ordnance Bureau—expressed the number and quality and price of the arms; and its due execution was officially certified by the authorized officer of the Government.

The theory of the Government would appear to have been, that a better or different contract ought to have been made than was made, or that the Claimant ought to have furnished better arms than the inspectors were willing and bound to accept, or than the agreement provided.

The demand cannot be described, in any just, legal sense,

as a disputed one. The attempted reduction of the amount legally due was a purely arbitrary act.

It is needless to draw the contrast between this claim, and the claims in the controversy in the Adams and Child cases. And, in Clyde's case, the contract of charter was not valid or obligatory until the action of the Quartermaster General; and when he acted, he modified it in the manner that appears in that case. All the previous cases may be justly said to be founded on *disputed* claims, within the just meaning of the terms. (Wilkinson *vs.* Byers, 1 A. & E., 106.)

(*b*) It may be mentioned, also, though it is scarcely necessary to do so, that the circumstances attending the payment of the sum remitted to the present Claimant by the Treasury Department were wholly different from those attending the payment of the amounts allowed in the previous cases.

There is nothing in what occurred in reference to this payment—certainly nothing brought home to the knowledge of the Claimant—even tending to show that the Executive Department intended that it should be regarded as anything else than what it was in fact—a partial payment of the amount liquidated by the voucher. A public creditor for an ascertained amount, he receives from the Treasurer a treasury draft and some certificates of indebedness. The fact of their receipt, in due course of business, he acknowledges in a letter to that officer. No receipt is given, upon any modified or reduced account, "in full of the above account," (as in the Child and Clyde cases;) and no such receipt is required to be given before or after he receives the amount remitted, by any Department of the Government. The payment was made, in the usual manner of such payments, at the Treasury, and receipt of the amount was acknowledged, as in the due course of such business.

Second. But, if the proceedings of the accounting officers could be presumed to have been known to the claimant, the character and amount of the deduction from the face of

the voucher preclude the idea that he took, or meant to take, the reduced amount in satisfaction of this debt.

Such a presumption would be contrary to all experience of human nature. For, by the manner of stating this account in the Auditor's Office, the Government proposed to enforce *restitution* of over eight thousand dollars, already in the pocket of the Claimant, for arms not embraced at all in this voucher. A reduction was made of the price, not only of the four hundred and seventy-two muskets in this voucher, but of over eight hundred *other* muskets long since paid for; and the supposed overpayment on account of these latter was deducted from the amount certified to be payable in the last voucher.

The Claimant would have been more or less than man if, in receiving this parcel of the amount due, he meant to acquiesce in this arbitrary action in respect to his debt, and intended to abide by it.

What was the proceeding, but the assertion by the Government of a claim against this party for damages for an alleged breach of warranty, the adjudication of that claim in its own favor, and the execution of that judgment out of the money due the claimant in its own hands?

It so happened that the damages assessed by the United States in their own favor were *less* than the amount in their hands due the Claimant for the property (besides these rifled muskets) embraced in the voucher; but these damages might have been *more* than the amount due the Claimant. And if the Government, by stating such an account as this, and remitting the Claimant the balance, can hold him to a satisfaction of the whole indebtedness, then, surely, it could have made him a debtor to the United States, by charging him with an alleged balance in his favor, and exhibiting an account to that effect, if the damages assessed had turned out to be more than the debt due him for the property purchased.

Third. The appearance of the Claimant before the Ordnance Board cannot, of course, prejudice his right to recover this debt.

The board took cognizance of the matter solely upon the action of the War Department. The Claimant protested before it that, as his arms were accepted after inspection by Government authority, the United States could not rightfully decline to pay for all so accepted. (See Rec., p. 13.) In other words, he denied there, as he had the right to do, that there was power anywhere to release the Government from the obligation of its contract with him.

He was, at the same time, not unwilling to aid the board, or the War Department, in any proper investigation of the facts of the case.

The record shows that, as it was, the board fell into two remarkable errors in regard to important facts connected with the transaction. (Rec., p. 13.) They have been referred to already. One (in regard to the number of arms complained of) was corrected. The other (in regard to the actual terms of the contract) remained uncorrected, apparently, on the face of their report to the Ordnance Bureau.

Their report was rendered to that bureau. The Claimant received nothing from them; was not required to receive anything or to assent to anything; and did not assent to anything.

He cannot, of course, be affected by the action of the accounting officers, under orders of the Ordance Bureau. The money he received was received in due course of business from the Treasury Department. He had a right to take it; for he held a voucher, lawfully issued by authority of the United States, for property delivered under valid contracts, and inspected and accepted by a competent officer, which showed a liquidated demand for over $19,000 against the Government.

II.

The second question—whether, independently of the theory of satisfaction, the United States, upon the facts contained in the record, have any legal defence to this claim—requires very little argument on the part of the Appellee.

1. There can be no dispute in regard to the fact and terms of the contract, or that it was made by competent authority of the Ordnance Department. There was no question on these points below. There will and can be none here. Nor will it be denied, we apprehend, that where a party offers to furnish articles like guns to the Government, whose officers are experts, subject to the inspection of those officers by a sample delivered and examined at the time, and, after acceptance of the offer, the guns are delivered and inspected, approved and received in good faith, the Government is concluded by the determination of its official inspectors and advisers, and cannot withhold payment of the agreed price on the ground that the guns were not suitable to the public service. The sample is delivered to enable the experts and advisers of the Government to judge whether the arms are desirable, and as a criterion by which all delivered by the contractor may be examined, and the arms rejected or received.

The Government has a right to reject and refuse to pay for all arms disapproved in good faith by its inspectors, as not conformable to the sample. But it is bound to pay for all actually approved and accepted in good faith by these agents. As the contractor cannot complain of the decision of the inspectors, rejecting his arms for want of conformity to the sample, so the Government cannot repudiate the action of these inspectors in receiving the arms, as, in their judgment, equal to the sample. The parties having contemplated a submission to the decision of the official inspectors of the question of the conformity of any arms delivered to the sample deposited by the contractor, and these inspectors having decided in good faith that certain of them were equal to the sample and such as ought to be accepted under the contract, the parties are manifestly concluded by their determination.

Even if the reports of the inspection of the arms in the hands of the regiments in the field were competent, legal evidence of their condition, they would be entitled to little or no consideration; for, independently of the abuse to which all

arms in the hands of raw troops at that period were necessarily subjected, it is well known that the volunteers of that day all desired to be armed with muskets manufactured by the Government; and this would naturally lead to unfair treatment of other arms.

It will be observed by the Court, that the idea of fraud or collusion between the Claimant and inspectors in this case, cannot be entertained; for neither fraud nor collusion is found to have occurred by the Court of Claims.

It will also be observed, that there was no express warranty by the Claimant of the quality of the sample arm deposited with Lieutenant Treadwell. That officer thought the sample arm a serviceable one; but the Claimant never warranted it as such. The Government might have chosen to require a warranty; but failing to do so, the rule of *caveat emptor* must govern. The record shows, however, affirmatively, that Lieutenant Treadwell and the other trusted inspectors of the Government regarded the sample as a good, serviceable arm; and fully believed that as all the arms received were equal to the sample, they were likewise suitable and serviceable weapons.

2. Nor has the Court of Claims found that any of the arms were *not* as Lieutenant Treadwell described them—"good, serviceable arms, fit in all respects for use in the field."

The Court has found that the sample arm "was not equal to the Springfield rifle," and that "the Justice arms were far from being a first-class arm." (Rec., p. 9.) But that might well be, and yet the arms might nevertheless have been good and serviceable. Indeed, Lieutenant Treadwell states in his report, above quoted, that while they were inferior to the Springfield arm, and could not have passed inspection if subjected to *that* standard, he believed they would prove "good and serviceable." (Rec., p. 10.)

3. But, lastly, we observe that the Court of Claims has found, expressly and affirmatively, that these arms, while not in all respects similar to the sample arm, were, on an

average, not inferior (*i. e.*, were equal in quality) to the sample. (Rec., p. 9.)

Now, as the defence here proceeds on the ground that the guns were over $10,000 less than the agreed price, by reason of alleged breach of warranty by the claimant, the Government must show affirmatively, from the facts found by the Court of Claims, that it is entitled to an abatement of *that amount* from the contract price.

If the above finding can be interpreted as meaning (which we doubt) that *some* of the guns were not equal to the sample, as it does not show *how many* were so inferior to the sample, nor *how much less* they were worth than the contract price, the finding, it is scarcely necessary to say, can be of no avail to the United States in maintaining this defence.

Therefore it is, we remark, that for all the judicial purposes of this case, the finding is equivalent to an ascertainment that all the guns were equal in quality to the sample arms.

J. Hubley Ashton,
Of Counsel for Appellee.